

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE OF)	
POTENTIAL VIOLATION OF 26 <i>DEL. ADMIN. C.</i>)	
§ 80001 AND ASSOCIATED CIVIL PENALTIES)	DOCKET NO. 20-0166
ASSESSED TO PENINSULA OIL CO., INC.)	
(OPENED SEPTEMBER 18, 2019))	

ORDER NO. 9562

AND NOW, this 18th day of March 2020, the Delaware Public Service Commission (“Commission”) determines and orders the following:

WHEREAS, the Commission has qualified for federal certification to operate a state pipeline safety compliance program pursuant to 49 U.S.C. § 60105(a) and has the authority pursuant to 26 *Del. C.* § 821 to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601); and

WHEREAS, the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199, authorize the Commission to order remedial actions and impose civil penalties where appropriate; and

WHEREAS, Peninsula Oil Co., Inc. (“Peninsula”) is an “Operator” as set forth in 26 *Del. Admin. C.* § 8001-1.0 and 26 *Del. C.* § 802(11) in that Peninsula acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware and therefore falls within the Commission’s jurisdiction; and

WHEREAS, Chavis Bianco, a member of the Commission’s Staff (“Staff”), performed a construction inspection on July 17, 2019, of the facilities of Peninsula, the Operator, at 31276 Lakeview Blvd., Lewes De 19958 and 11428 Buckingham Drive, Delmar, DE 19940 (the “Locations”) and noted his findings in a written report (the “Report”), which noted that

Peninsula had failed to perform certain inspections or have certain documentation available for inspection, as well as failed to comply with other general requirements of pipeline safety at the Locations; and

WHEREAS, Peninsula's failure to inspect and test the pressure limiting and regulating stations within 15 months also represents two potential violations of 49 C.F.R. § 192.739(a);¹ and

WHEREAS, Peninsula's failure to perform the above-mentioned tasks also represents one potential violation of 49 C.F.R. § 192.605(a);² and

WHEREAS, Peninsula's failure to identify an excess flow valve ("EEV") represents one potential violation of 49 C.F.R § 192.381(c);³ and

WHEREAS, Peninsula's failure to locate the point of discharge not less than 5ft (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes represents a violation of NFPA 58 (2004), Section 6.7.4.6: Regulator Installation (**Both locations**);⁴ and

WHEREAS, Peninsula's failure to properly install on adjacent piping or on a

¹ 49 C.F.R. § 192.739(a) deals with "Pressure limiting and regulating stations: Inspection and testing" and requires the following: "Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is (1) in good mechanical condition; (2) adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a); and (4) properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation."

² 49 C.F.R. § 192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and states the following: "General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

³ 49 C.F.R § 192.381(c) deals with the requirement that an operator must mark or otherwise identify the presence of an excess flow valve in the service line.

⁴ NFPA 58 (2004), Section 6.7.4.6 deals with the point of discharge and its required location of not less than 5 ft. (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

structure clearly visible nameplate information of a buried container in violation of NFPA 58 (2004), Section 5.2.8.3 (b) & (c) - Container Markings (**Both Locations**);⁵ C.F.R 192.329;⁶ and

WHEREAS, based on Mr. Bianco's written report and findings, Mr. Wayne B. Ericksen, a member of Staff and the Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Mr. John Willey, II President of Peninsula Jr., Director of Gas Operations and Engineering for Peninsula;⁷ and

WHEREAS, the NOPV indicated that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the "Regulations"), to order remedial actions and to impose civil penalties. The NOPV further indicated because Peninsula Oil had not recently performed all of the monitoring and testing required, nor had it provided documentation to show that these tasks had been completed in 2019; and

WHEREAS, Staff recommended in the NOPV that the Commission impose an increased civil penalty of \$6000.00 for two potential violations of **49 C.F.R. § 192.739(a)** due to earlier NOPV fines in 2015 and 2017, an increased civil penalty of \$2000.00 for potential violation of **49 C.F.R. § 192.605(a)** due to an earlier NOPV fine in 2017, an increased civil penalty of \$2,000.00 for potential violations of **49 C.F.R. § 192.381(c)** due to an earlier NOPV fine in 2017, and a civil penalty of \$1,000 for one potential violation of **NFPA 58 (2004) Section 6.7.4.6**

⁵ NFPA 58 (2004), Section 5.2.8.3 deals with markings specified for ASME containers shall be on a stainless-steel metal nameplate attached to the container, located to remain visible after the container is installed. Sub-sections (b) & (c) deal with situations where the container is buried or otherwise covered.

⁶ 49 C.F.R. § 192.329 deals with plastic pipelines installed by trenchless excavation which must comply with the following: (a) Each operator must take practicable steps to provide sufficient clearance for installation and maintenance activities from other underground utilities and/or structures at the time of installation; (b) For each pipeline section, plastic pipe and components that are pulled through the ground must use a weak link, as defined by § 192.3, to ensure the pipeline will not be damaged by any excessive forces during the pulling process

⁷ A copy of the NOPV and Report are attached to the Proposed Consent Agreement (defined below).

at two locations which sub-totals \$2,000, and a civil penalty of \$1,000 for one potential violation of **NFPA 58 (2004) Section 5.2.8.3 (b) & (c)** at two locations which sub-totals \$2,000. Thus, the total amount of recommended civil penalties made by Staff was \$14,000.00; and

WHEREAS, Peninsula and Staff have entered into settlement negotiations and agreed to resolve the potential violations and the civil penalties by entering into a consent agreement (the “Proposed Consent Agreement”), which is attached as **Attachment “A”**;⁸ and

WHEREAS, Staff and Peninsula submit that resolving this matter through a negotiated compromise without the need for a formal evidentiary hearing or further administrative proceedings serves the public interest, yields an equitable result, and that the civil penalties are within the bounds of reasonableness based on circumstances unique to Peninsula:

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* § 512(c), the Commission finds that the attached Proposed Consent Agreement is in the public interest for the reasons set forth above and, therefore, approves such agreement in full.
2. Pursuant to 26 *Del. Admin. C.* § 8001-7.1.2, 49 U.S.C. § 60122(a), and subpart B of Part 190 of the Federal Regulations, and as has been agreed to by Peninsula, the Commission assesses a civil penalty against Peninsula in the amount of \$14,000, which the Commission acknowledges by this Order has been paid.
3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

⁸ Both Staff and Peninsula agree that the Proposed Consent Agreement is subject to the Commission’s review and final approval.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

ATTACHMENT “A”

Executed January 31, 2020 Proposed Consent Agreement

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE OF)
POTENTIAL VIOLATION OF 26 *DEL. ADMIN. C.*)
§8001 AND ASSOCIATED CIVIL PENALTIES) PSC DOCKET NO. XX-XXXX
ASSESSED TO PENNISULA OIL CO.,INC.)
(OPENED SEPTEMBER 18, 2019))

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT is made this 31 day of January 2020 between Peninsula Oil Co. Inc., a Delaware corporation ("Peninsula") and the Delaware Public Service Commission Staff ("Staff")

WHEREAS, Peninsula is a Delaware corporation with mailing address and registered agent address at 40 S. Market St., Seaford, DE 19973; and

WHEREAS, Peninsula is an "Operator" as set forth in 26 *Del. C.* § 802(11)¹ and 26 *Del. Admin. C.* § 8001-1.0² in that such company acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware; and

WHEREAS, the Delaware Public Service Commission (the "Commission") has qualified for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a), which relates to the regulation of intrastate gas pipeline transportation; and

WHEREAS, 26 *Del. C.* § 821 provides, in pertinent part, that the Commission "shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a)....";³ and

¹ 26 *Del. C.* § 802(11) defines an "underground pipeline facility operator" as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. §1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the "Natural Gas Pipeline Safety Act of 1968" and the "Hazardous Liquid Pipeline Safety Act of 1979." See P.L. 103-272; 108 Stat. 745; 49 U.S.C. §§ 60101 through 60128.

² Under 26 *Del. Admin. C.* § 8001-1.0, an "Operator" means an "underground pipeline facility operator" as defined in 26 *Del. C.* § 802(11).

³ 26 *Del. C.* § 821 further provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 *Del. C.* § 802(11).

WHEREAS, as part of its duties as a certified state pipeline safety compliance program, Chavis Bianco, a member of Staff and pipeline safety inspector, performed a construction inspection on July 17, 2019, of the facilities of Peninsula, the Operator of 31276 Lakeview Blvd., Lewes DE 19958 and 11428 Buckingham Drive, Delmar, DE 19940 (the "Locations"); and

WHEREAS, Mr. Bianco prepared a written report based on his construction inspection, which noted that Peninsula had failed to perform certain inspections or have certain documentation available for inspection, as well as failed to comply with other general requirements of pipeline safety at the Locations; and

WHEREAS, Peninsula's failure to inspect and test the pressure limiting and regulating stations within 15 months also represents two potential violations of 49 C.F.R. § 192.739(a);⁴ and

WHEREAS, Peninsula's failure to perform the above-mentioned tasks also represents one potential violation of 49 C.F.R. § 192.605(a);⁵ and

WHEREAS, Peninsula's failure to identify an excess flow valve ("EEV") represents one potential violation of 49 C.F.R. § 192.381(c);⁶ and

WHEREAS, Peninsula's failure to locate the point of discharge not less than 5ft (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes represents a violation of NFPA 58 (2004), Section 6.7.4.6: Regulator Installation (**Both locations**);⁷ and

WHEREAS, Peninsula's failure to properly install on adjacent piping or on a structure clearly visible nameplate information of a buried container in violation of NFPA 58 (2004), Section 5.2.8.3 (b) & (c) - Container Markings (**Both Locations**);⁸ and

⁴ 49 C.F.R. § 192.739(a) deals with "Pressure limiting and regulating stations: Inspection and testing" and requires the following: "Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is (1) in good mechanical condition; (2) adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a); and (4) properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation."

⁵ 49 C.F.R. § 192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and states the following: "General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

⁶ 49 C.F.R. § 192.381(c) deals with the requirement that an operator must mark or otherwise identify the presence of an excess flow valve in the service line.

⁷ NFPA 58 (2004), Section 6.7.4.6 deals with the point of discharge and its required location of not less than 5 ft. (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

⁸ NFPA 58 (2004), Section 5.2.8.3 deals with markings specified for ASME containers shall be on a stainless steel metal nameplate attached to the container, located to remain visible after the container is installed. Sub-sections (b)

WHEREAS, based on Mr. Bianco's written report and findings, on September 18, 2019, Mr. Wayne B Eriksen, a member of Staff and the Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Mr. John Willey, II, President of Peninsula. A copy of the NOPV that Staff sent to Mr. Willey is attached as Exhibit "A"; and

WHEREAS, the NOPV indicated that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the "Regulations"), to impose civil penalties; and

WHEREAS, Staff recommended in the NOPV that the Commission impose an increased civil penalty of \$6000.00 for two potential violations of **49 C.F.R. § 192.739(a)** due to earlier NOPV fines in 2015 and 2017, an increased civil penalty of \$2000.00 for potential violation of **49 C.F.R. § 192.605(a)** due to an earlier NOPV fine in 2017, a increased civil penalty of \$2,000.00 for potential violations of **49 C.F.R. § 192.381(c)** due to an earlier NOPV fine in 2017, and a civil penalty of \$1,000 for one potential violation of **NFPA 58 (2004) Section 6.7.4.6** at two locations which sub-totals \$2,000, and a civil penalty of \$1,000 for one potential violation of **NFPA 58 (2004) Section 5.2.8.3 (b) & (c)** at two locations which sub-totals \$2,000. Thus, the total amount of recommended civil penalties made by Staff was \$14,000.00; and

WHEREAS, Peninsula and Staff thereafter entered into settlement negotiations and hereby propose to resolve all of the issues in this proceeding without recourse to a formal administrative hearing by entering into this Proposed Consent Agreement under the terms and conditions set forth herein; and

WHEREAS, Peninsula has been informed that it is entitled to an evidentiary hearing and to be represented by counsel but has decided to waive its right to an evidentiary hearing;

NOW, THEREFORE, upon the mutual consent and agreement of Peninsula and Staff (individually, a "Party," and collectively, the "Parties"), the Parties hereby propose a complete settlement of all issues in this proceeding as follows:

1. The Parties have conferred and have agreed to enter into this Proposed Consent Agreement on the terms and conditions contained herein because they believe that resolving the matter by stipulation will serve the interests of the public. The Parties also agree that the terms and conditions of this Proposed Consent Agreement will be presented to the Commission for the Commission's final approval.

2. Peninsula waives its right to an evidentiary hearing for this proceeding and makes such waiver as a free and voluntary act.

&(c) deal with situations where the container is buried or otherwise covered.

3. Peninsula states it fully understands all of the violations alleged by Staff, the facts relating to above-referenced potential violations, and all of the consequences of its consent to this Proposed Consent Agreement.

4. Peninsula admits to all of the facts as set forth above and admits that it failed to perform certain inspections or have certain documentation available for inspection, as well as failed to comply with other general requirements of pipeline safety at the Locations in calendar 2019, all of which represents potential violations of 49 C.F.R. § 192.739(a), 49 C.F.R. § 192.605(a), 49 C.F.R. § 192.381(c), NFPA 58 (2004), Section 6.7.4.6, and NFPA 58 (2004), Section 5.2.8.3 (b) & (c); and

5. Pursuant to 26 *Del. Admin. C.* § 8001-7.1.2, Peninsula agrees to pay a civil penalty in the amount of \$14,000 within 20 days of the date of a final Commission order that approves this Proposed Consent Agreement. This sum is the total of a civil penalty presenting \$6000.00 for two potential violations of **49 C.F.R. § 192.739(a)**, an increased civil penalty of \$2000.00 for potential violation of **49 C.F.R. § 192.605(a)**, an increased civil penalty of \$2,000.00 for potential violations of **49 C.F.R. § 192.381(c)**, a civil penalty of \$1,000 for one potential violation of **NFPA 58 (2004) Section 6.7.4.6** at two locations, and a civil penalty of \$1,000 for one potential violation of **NFPA 58 (2004) Section 5.2.8.3 (b) & (c)** at two locations. Pursuant to 26 *Del. C.* § 116(b)(2), these civil penalties shall be payable to and deposited into the General Fund of the State of Delaware.

6. If Peninsula fails to pay the sum of \$14,000.00 in civil penalties within 20 days of the date of a final Commission order approving this Proposed Consent Agreement, Peninsula [Company] agrees that it shall pay interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be assessed if payment is not made within 110 days of service of a Notice of Late Payment. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Delaware Attorney General for appropriate action.

7. The terms of this Proposed Consent Agreement are binding upon Peninsula its successors and assigns, and may be admitted into evidence in any judicial or administrative proceeding that may be required against Peninsula in order to enforce its terms.

8. This finding of violations will be considered a prior offense in any subsequent enforcement action against Peninsula.

9. Nothing in this Proposed Consent Agreement affects or relieves Peninsula of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. Nothing in this Agreement alters Staff's right of access, entry, inspection, and information gathering or Staff's authority to bring enforcement actions against Peninsula pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's law or regulations, or any other provision of Federal or State law.

10. No change, amendment, or modification to this Proposed Consent Agreement shall be effective or binding unless it is in writing and is dated and signed by the Parties.

11. If Staff or the Commission fails to act on any one or more defaults by Peninsula, such failure to act shall not be a waiver of any rights hereunder on the part of the Staff or the Commission to declare Peninsula in default and to take such action as may be permitted by this Proposed Consent Agreement or by law.

12. This agreement shall survive Peninsula and be enforceable against its successors or assigns.

13. The provisions of this Proposed Consent Agreement are not severable.

14. The Parties agree that this Proposed Consent Agreement may be submitted to the Commission for its consideration and final decision and that no Party will oppose such a determination. Except as expressly set forth herein, neither of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

15. This Proposed Consent Agreement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Consent Agreement shall be implemented and enforceable notwithstanding the pendency of any legal challenge to the Commission's approval of this Proposed Consent Agreement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

16. The Parties may enforce this Proposed Consent Agreement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Proposed Consent Agreement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

17. If a Court grants a legal challenge to the Commission's approval of this Proposed Consent Agreement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Proposed Consent Agreement, or if some other legal bar has the same effect, then this Proposed Consent Agreement is voidable upon written notice by either Party to the other Party.

18. This Proposed Consent Agreement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Consent Agreement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Proposed Consent Agreement without modifications; or (b) in other proceedings before the Commission or another governmental body so long as such positions do not attempt to abrogate this Proposed Consent Agreement. This Proposed Consent Agreement is determinative and conclusive of all of

the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

19. This Proposed Consent Agreement contains all of the Parties' agreed terms and conditions and constitutes the Parties' final agreement.

20. This Proposed Consent Agreement is expressly conditioned upon the Commission's approval of all of the specific terms and conditions contained herein without modification. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Consent Agreement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will make their best efforts to support this Proposed Consent Agreement and secure the Commission's approval of this Proposed Consent Agreement.

21. It is expressly understood and agreed that this Proposed Consent Agreement constitutes a negotiated resolution of the issues in this proceeding.

22. Each of the undersigned representatives of the Parties certifies that he or she is fully and legally authorized by the Party represented to enter into the terms and conditions hereof and to execute and legally bind that Party to it.

23. This Proposed Consent Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party sends the other Party a signature on this Proposed Consent Agreement via facsimile transmission or e-mail as a ".PDF" format file, such signature shall create a valid and binding obligation of the Party executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".PDF" signature page were an original thereof. Peninsula agrees that an uncertified copy hereof shall be valid as evidence in any proceeding that may be required for purposes of enforcement.

[SIGNATURE PAGE TO FOLLOW]

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Proposed Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth in this Proposed Consent Agreement.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: Wayne B. Erickson Date: 1/22/2020
Printed Name: WAYNE B. ERICKSEN, P.E.
Title: PSC PIPELINE SAFETY PROGRAM MANAGER

PENINSULA OIL CO., INC.

By: [Signature] Date: 1-31-2020
Printed Name: John L. Hye
Title: President

EXHIBIT "A"

**COPY OF WRITTEN NOTICE OF POTENTIAL VIOLATIONS
OF 26 *DEL. ADMIN. C.* § 8001 DATED SEPTEMBER 30, 2019,
FROM WAYNE B. ERICKSEN, PROGRAM MANAGER OF
THE PIPELINE SAFETY PROGRAM FOR THE STATE OF DELAWARE,
TO JOHN WILLEY II, PRESIDENT,
PENINSULA OIL
(INCLUDING COPY OF VIOLATION REPORT DATED JULY 17, 2019)**



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

September 30, 2019

Peninsula Oil Co., Inc.
ATTN: John Willey, II, President
40 S. Market St.
Seaford, DE 19973

RE: Written Notice of Potential Violation of 26 Del. Admin. C. § 8001 – July 17, 2019, 31276 Lakeview Blvd, Lewes DE 19958 and 11428 Buckingham Drive, Delmar, DE 19940

Dear Mr. Willey:

This letter is sent on behalf of the Delaware Public Service Commission (the "Commission") and serves as notice to Peninsula Oil Co., Inc. (the "Operator") of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program, **26 Del. Admin. C. § 8001** (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, **49 C.F.R 190-193 and 198-199**.

On July 17, 2019, Mr. Chavis Bianco, a member of the Commission Staff ("Staff"), performed a Construction Inspection of 31276 Lakeview Blvd, Lewes DE 19958 and 11428 Buckingham Drive, Delmar, DE 19940.

This represents the following potential violations:

- 1) One violation of **49 CFR § 192.739(a) Pressure limiting and regulating stations: Inspection and testing. (Both locations)**, which requires the following:
 - (a) Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is—
 - (1) In good mechanical condition;

(2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed;

(3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of §192.201(a); and

(4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

(b) For steel pipelines whose MAOP is determined under §192.619(c), if the MAOP is 60 psi (414 kPa) gage or more, the control or relief pressure limit is as follows:

If the MAOP produces a hoop stress that is:	Then the pressure limit is:
Greater than 72 percent of SMYS	MAOP plus 4 percent.
Unknown as a percentage of SMYS	A pressure that will prevent unsafe operation of the pipeline considering its operating and maintenance history and MAOP.

Mr. Bianco commented:

“Each pressure limiting station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is: (1) in good mechanical condition; (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a); and (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Operator has not performed this inspection within the 15 month period.”

- 2) One violation of **49 CFR § 192.605(a) – Procedural manual for operations, maintenance, and emergencies**, which requires the following:

(a) General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

Mr. Bianco commented:

"Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response."

- 3) One violation of: **49 CFR § 192.381(c)- Service lines: Excess flow valve performance standards. (The Reserves at Lewes Landing)**, which requires the following:

(c) An operator must mark or otherwise identify the presence of an excess flow valve in the service line.

Mr. Bianco commented:

"This regulation requires that if an excess flow valve (EFV) is installed that there is identification of the presence of an EFV."

- 4) One violation of **NFPA 58 (2004), Section 6.7.4.6: Regulator Installation. (Both Locations)**, which requires the following:

6.7.4.6 The point of discharge shall also be located not less than 5 ft (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

Mr. Bianco commented:

"The point of discharge shall also be located not less than 5 ft (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes."

- 5) One violation of **NFPA 58 (2004), Section 5.2.8.3 (b) & (c) – Container Marking: (Both Locations)**, which requires the following:

(B) Where the container is buried, mounded, insulated, or otherwise covered so the nameplate is obscured, the information contained on the nameplate shall be duplicated and installed on adjacent piping or on a structure in a clearly visible location.

(C) ASME containers shall be marked with the following information:

- (1) Service for which the container is designed (for example, underground, aboveground, or both)
- (2) Name and address of container supplier or trade name of container
- (3) Water capacity of container in pounds or U.S. gallons
- (4) MAWP in pounds per square inch

- (5) The wording "This container shall not contain a product that has a vapor pressure in excess of ____ psig at 100°F" (See Table 5.2.4.2.)
- (6) Outside surface area in square feet
- (7) Year of manufacture
- (8) Shell thickness and head thickness
- (9) OL (overall length), OD (outside diameter), HD (head design)
- (10) Manufacturer's serial number
- (11) ASME Code symbol
- (12) Minimum design metal temperature ____ °F at MAWP
____ psi
- (13) Type of construction "W"
- (14) Degree of radiography "RT- ____"

Mr. Bianco commented:

"When the container is buried or otherwise covered so that the nameplate is obscured, the information contained on the nameplate shall be duplicated and installed on adjacent piping or on a structure in a clearly visible location."

Staff recognizes that the Operator did not have the required documentation ready for inspection day, but is working to provide it. However, the continued lack of attention to these sites is concerning. Therefore, Staff is recommending that the Commission,

1. impose an increased civil penalty of \$3,000.00 per potential violation of **49 C.F.R. § 192.739(a)** due to earlier NOPV fines in 2015 and 2017, which sub-totals \$6,000.00
2. impose an increased civil penalty of \$2,000.00 per potential violation of **49 C.F.R. § 192.605(a)** due to earlier NOPV fine in 2017, which sub-totals \$2,000.00
3. impose an increased civil penalty of \$2,000.00 per potential violation of **49 C.F.R. § 192.381(c)** due to earlier NOPV fine in 2017, which sub-totals \$2,000.00
4. impose a civil penalty of \$1,000.00 per potential violation of **NFPA 58 (2004) Section 6.7.4.6**, which sub-totals \$2,000.00
5. impose a civil penalty of \$1,000.00 per potential violation of **NFPA 58 (2004) Section 5.2.8.3 (b) & (c)**, which sub-totals \$2,000.00.


Thus, the total amount of recommended civil penalties is \$14,000.00.

Under the pertinent Commission Regulations, 26 Del. Admin. C. Section 8005, the Operator has thirty (30) days to respond to this notice in writing unless the Operator and Staff otherwise agree.

Mr. John Willey II, Peninsula Oil Co., Inc.
September 30, 2019
Page 5

If you have questions regarding this matter, please contact me at 302-736-7526 or
Wayne.Ericksen@delaware.gov.

Sincerely,

A handwritten signature in cursive script that reads "Wayne B. Ericksen". The signature is written in dark ink and is positioned above the printed name.

Wayne B. Ericksen, Program Manager

Enclosure: Copy of Violation Report for July 11, 2019

cc: James McC. Geddes, Esq., Staff Rate Counsel
Chavis Bianco, DE PSC Pipeline Safety Inspector / Engineer III

UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
GAS PIPELINE SAFETY VIOLATION REPORT

1. <u>Inspector Name</u> Chavis Bianco	2. <u>Date of Inspection</u> July 17, 2019	3. <u>CPF #</u>																
4. <u>Pipeline Operator/Owner</u> Peninsula Oil Co., Inc.																		
5a. <u>Headquarters Address</u> 40 S. Market Street Seaford, DE 19973				5b. <u>Telephone No.</u> (302) 629-3001														
6. <u>Inspection Locations (Two Locations)</u> The Preserves at Lewes Crossing 31276 Lakeview Blvd, Lewes DE Yorkshire Estates 11428 Buckingham Drive, Delmar DE				7. <u>Inspection Unit</u> No. <u>1</u> of <u>1</u>														
8. <u>Portion of System Inspected (Describe location & facility)</u> The PSC performed the annual inspection at the two locations which are maintained by Peninsula Oil Co., Inc. in Delaware. These two locations are The Preserves at Lewes Crossing and Yorkshire Estates.																		
<table style="width: 100%;"> <tr> <td colspan="2" style="vertical-align: top;"> 9. <u>Nature and Size of Operator</u> </td> <td colspan="2" style="vertical-align: top;"> 9b. <u>Type of Pipe in System</u> </td> <td colspan="2" style="vertical-align: top;"> 9c. <u>Size of Operator (No. of Miles/Customers/Storage Capacity)</u> </td> </tr> <tr> <td style="vertical-align: top;"> 9a. <u>Type of Operator</u> <input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (intrastate) <input checked="" type="checkbox"/> LPG <input type="checkbox"/> Master Meter <input type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input checked="" type="checkbox"/> Transmission (intrastate) </td> <td style="vertical-align: top;"> <input type="checkbox"/> Cast Iron <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Plastic <input type="checkbox"/> Other - </td> <td colspan="2" style="vertical-align: top;"> (No. of Miles/Customers/Storage Capacity) ~2.25 Miles/130/12,000 gal </td> <td colspan="2"></td> </tr> </table>							9. <u>Nature and Size of Operator</u>		9b. <u>Type of Pipe in System</u>		9c. <u>Size of Operator (No. of Miles/Customers/Storage Capacity)</u>		9a. <u>Type of Operator</u> <input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (intrastate) <input checked="" type="checkbox"/> LPG <input type="checkbox"/> Master Meter <input type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input checked="" type="checkbox"/> Transmission (intrastate)	<input type="checkbox"/> Cast Iron <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Plastic <input type="checkbox"/> Other -	(No. of Miles/Customers/Storage Capacity) ~2.25 Miles/130/12,000 gal			
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10. <u>Nature of Probable Violations (Check as many as applicable)</u> <table style="width: 100%;"> <tr> <td style="vertical-align: top;"> <input checked="" type="checkbox"/> 1. Problem in Design/Materials <input type="checkbox"/> 2. Problem in Construction <input type="checkbox"/> 3. Welding or Joining <input type="checkbox"/> 4. Problem in LNG Equipment <input type="checkbox"/> 5. Test Requirements or MAOP Qualification <input type="checkbox"/> 6. Corrosion Control <input checked="" type="checkbox"/> 7. Pressure Control <input type="checkbox"/> 8. Other Maintenance/Monitoring <input checked="" type="checkbox"/> 9. Personnel Qualifications & Training <input type="checkbox"/> 10. Fire Protection <input type="checkbox"/> 11. Security <input type="checkbox"/> 12. Anti-Drug Program <input type="checkbox"/> 13. Other Operations <input type="checkbox"/> 14. Reporting Requirements <input type="checkbox"/> 15. Other <input type="checkbox"/> 16. Inadequate/No Procedures </td> <td style="vertical-align: top;"> <input type="checkbox"/> A. Construction <input type="checkbox"/> B. Corrosion Control <input type="checkbox"/> C. Operations <input type="checkbox"/> D. Training <input type="checkbox"/> E. Maintenance </td> </tr> </table>							<input checked="" type="checkbox"/> 1. Problem in Design/Materials <input type="checkbox"/> 2. Problem in Construction <input type="checkbox"/> 3. Welding or Joining <input type="checkbox"/> 4. Problem in LNG Equipment <input type="checkbox"/> 5. Test Requirements or MAOP Qualification <input type="checkbox"/> 6. Corrosion Control <input checked="" type="checkbox"/> 7. Pressure Control <input type="checkbox"/> 8. Other Maintenance/Monitoring <input checked="" type="checkbox"/> 9. Personnel Qualifications & Training <input type="checkbox"/> 10. Fire Protection <input type="checkbox"/> 11. Security <input type="checkbox"/> 12. Anti-Drug Program <input type="checkbox"/> 13. Other Operations <input type="checkbox"/> 14. Reporting Requirements <input type="checkbox"/> 15. Other <input type="checkbox"/> 16. Inadequate/No Procedures	<input type="checkbox"/> A. Construction <input type="checkbox"/> B. Corrosion Control <input type="checkbox"/> C. Operations <input type="checkbox"/> D. Training <input type="checkbox"/> E. Maintenance										
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Violation No. 1

11a. CFR ☐ Violated: 49 CFR §192.739(a) Pressure limiting and regulating stations: Inspection and testing. (Both locations)

11b. Summarize what the regulation requires that operator did not do:

Each pressure limiting station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is: (1) in good mechanical condition; (2) Adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; (3) Except as provided in paragraph (b) of this section, set to control or relieve at the correct pressure consistent with the pressure limits of § 192.201(a); and (4) Properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation.

The Operator has not performed this inspection within the 15 month period.

12. Provide detailed information about violation:

The regulator stations at Lewes Landing and Yorkshire Estates were last inspected by David Casamento of J.D. Rellek Co., on January 5, 2017. The regulation stated requires inspection annually not to exceed 15 months. As of the day of the inspection, the regulator stations at both locations have not been inspected since January 5, 2017. Based on the regulation the stations should have been inspected by April 5, 2018. If they were inspected then, they were then to be inspected next by July 5, 2019.

Development	Regulator Inspection Date	Due in 2018	Due in 2019
Lewes Landing	1/5/2017	4/5/2018	7/5/2019
Yorkshire Estates	1/5/2017	4/5/2018	7/5/2019

13. Public and/or environmental concerns in area of violation:

The safety of the homeowners at each of these communities are of concern when the regulator stations have not been maintained for nearly two and a half years.

14a. Person Interviewed: Brittany Wilkerson of Peninsula Oil and Propane **Title:** Director of Operations

From: Bianco, Chavis (DOS) [mailto:Chavis.Bianco@delaware.gov]

Sent: Monday, August 12, 2019 9:35 AM

To: Brittany Wilkerson <Brittany.Wilkerson@callrednow.com>

Subject: RE: Peninsula -- Inspection Recap 7/17/19

So you have no regulator maintenance sheets from 2018 for either site, correct?

14b. Comments of person interviewed: Emailed on August 12, 2019 at 9:43 am

"We always have had the CP testing and the reg sheets done together, so no, those are being done now by bob shumate."

14c. Person Interviewed: Dallas Bryan of Peninsula Oil and Propane **Title:** Service Manager

14d. Comments of person interviewed: Emailed on August 27, 2019 at 10:44 am

"THE REGULATOR TESTING IS DONE JUST WAITING TO GET INFO SENT BACK SO I CAN FORWARD 551730"

Violation No. 2

11a. CFR ☐ Violated: 49 CFR 192.605(a) - Procedural manual for operations, maintenance, and emergencies.

11b. Summarize what the regulation requires that operator did not do:

Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.

12. Provide detailed information about violation:

The operator has a written procedure which states the following: (page 23)

"Inspect each high pressure regulator at least once each year, at intervals not to exceed (15) months, to determine its outlet pressure and its physical condition, to include the external surface, adjusting spring, vent opening, and the stability of its mounting. Record the results. In addition, the regulations require a test to be conducted annually to determine if the overpressure protection device (internal or external relief valve) is of sufficient capacity for the system, if feasible. If not feasible, a calculation must be made on an annual basis to ensure the capabilities of the relief device."

13. Public and/or environmental concerns in area of violation:

When the operator does not follow their own written procedures, the safety of the operator personnel and the public are at risk.

14a. Person Interviewed: Brittany Wilkerson of Peninsula Oil and Propane **Title:** Director of Operations

From: Bianco, Chavis (DOS) [mailto:Chavis.Bianco@delaware.gov]

Sent: Monday, August 12, 2019 9:35 AM

To: Brittany Wilkerson <Brittany.Wilkerson@callrednow.com>

Subject: RE: Peninsula -- Inspection Recap 7/17/19

So you have no regulator maintenance sheets from 2018 for either site, correct?

14b. Comments of person interviewed: Emailed on August 12, 2019 at 9:43 am

"We always have had the CP testing and the reg sheets done together, so no, those are being done now by bob shumate."

Violation No. 3

11a. CFR ☐ Violated: 49 CFR §192.381(c)- Service lines: Excess flow valve performance standards. (The Reserves at Lewes Landing)

11b. Summarize what the regulation requires that operator did not do:

This regulation requires that if an excess flow valve (EFV) is installed that there is identification of the presence of an EFV.

12. Provide detailed information about violation:

During the field inspection of The Reserves at Lewes Landing, the residence at 18235 Seagrass Court did not have an EFV notification tag or sticker. This is not in compliance with said regulation.

13. Public and/or environmental concerns in area of violation:

Minimal risk to the residents of The Reserves at Lewes Landing.

14a. Person Interviewed: Brittany Wilkerson of Peninsula Oil and Propane Title: Director of Operations

14b. Comments of person interviewed: Email from August 21, 2019 at 1:45 pm

"Our EFE tags came in on Thursday last week so I know Dallas gave them to Asa to take back out and tag."

14c. Person Interviewed: Dallas Bryan of Peninsula Oil and Propane Title: Service Manager

14d. Comments of person interviewed: Email from August 23, 2019 at 9:46 am

"THE EFT TAGS HAVE BEED INSTALLED IN LEWES LANDING AND YORKSHIRE."

Violation No. 4

11a. CFR ☐ Violated: NFPA 58, Section 6.7.4.6: Regulator Installation. (Both Locations)

11b. Summarize what the regulation requires that operator did not do:

The point of discharge shall also be located not less than 5 ft (1.5 m) in any direction away from any source of ignition, openings into direct-vent (sealed combustion system) appliances, or mechanical ventilation air intakes.

12. Provide detailed information about violation:

During the field inspection of Yorkshire Estates, the residence at 11762 and 11814 Buckingham Drive Way had the service regulators closer than five feet from a source of ignition. Additionally, several of the townhomes located on Buckingham Drive Way also had sources of ignition closer than 5 feet from a source of ignition.

During the field inspection of Lewes Landing, the residence at 18389 Dunes Way had the service regulator closer than five feet from a source of ignition.

13. Public and/or environmental concerns in area of violation:

If the service regulator were to relieve and a source of ignition is within 5 feet, a fire could occur. The regulation looks to remove a source of ignition. These residences are at a greater risk do to the Operator failing to follow this regulation.

14a. **Person Interviewed:** Dallas Bryan of Peninsula Oil and Propane **Title:** Service Manager

14b. **Comments of person interviewed:** Email from August 23, 2019 at 9:46 am

"THE REMOTE VENTING OF THE REGULATORS IS ALMOST COMPLETE THERE ARE STILL SEVERAL AT THE APARTMENT."

Violation No. 5

11a. CFR ☐ Violated: NEPA 58, Section 5.2.8.3 (b) & (c) - Container Marking: (Both Locations)

11b. Summarize what the regulation requires that operator did not do:

When the container is buried or otherwise covered so that the nameplate is obscured, the information contained on the nameplate shall be duplicated and installed on adjacent piping or on a structure in a clearly visible location.

12. Provide detailed information about violation:

During the field inspections at both locations the tank information could not be verified as the nameplates were not clearly visible.

13. Public and/or environmental concerns in area of violation:

Minimal risk to the residents of The Reserves at Lewes Landing and Yorkshire Estates.

14a. Person Interviewed: Title:

14b. Comments of person interviewed:

None

15. Supporting Documents/Materials

Item No.	Description (Include date)	Source of Documents	Remarks
1	Email from Brittany Wilkerson on August 12, 2019 at 9:43 am.	Brittany Wilkerson	No regulator sheets for 2018
2	Email from Brittany Wilkerson on August 21, 2019 at 1:45 pm.	Brittany Wilkerson	EFV tags were delivered
3	Email from Dallas Bryan on August 27, 2019 at 10:44 am.	Dallas Bryan	EFV tags have been installed, remote venting is almost done, the regulator inspection is complete but waiting on information from contractor

16. Inspector's Signature:

Date:

17. Compliance History

		Describe Violation/ Noncompliance	CPF No. Date WL	Outcome
Date	Place			
January 24, 2017	Reserve at Lewes Landing and Yorkshire Estates	NOPV - 49 CFR 192.739(a), 49 CFR 192.465(a), 49 CFR 192.481(c), 49 CFR 192.625(f), 49 CFR 192.605(a), 49 CFR 192.11(b) → NEPA 58 6.23.4.2 & 6.16.5, 49 CFR 192.381(c)		(\$)11,000.00
July 2, 2015	Reserve at Lewes Landing and Yorkshire Estates	NOPV - 49 CFR 192.747(a), 49 CFR 192.465(a), 49 CFR 192.739(a), 49 CFR 192.605(a)		(\$) 2,800.00

18. Gravity of Offense**19. Degree of Culpability**

Fair

20. Ability to Continue in Business

Excellent

21. Ability to Pay

Good

22. Good Faith in Attempting to Achieve Compliance**23a. Proposed Remedy**

☒ Warning Letter
☐ Civil Penalty: Recommended Amount \$ TBD
☐ Compliance Order
☐ Hazardous Facility Order
☐ Notice of Amendment of O&M Plan

23b. Analysis of Proposed Remedy

24. Regional Director's Signature:

Date:

U.S. Department of Transportation
Office of Pipeline Safety
Eastern Region

EXHIBIT TAB
Name of Operator

Exhibit No.

Evidence	Obtained from	Identifying Witness

Investigator Name	Title
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